



CALIFORNIA EMERGENCY MANAGEMENT AGENCY

November 09, 2009

Dear California Postconviction DNA Grant Recipients:

Congratulations! The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice has awarded the California Emergency Management Agency (Cal EMA) funding under the *Postconviction DNA Testing Assistance Program* (henceforth the "Program").

The amount of \$2,425,000 will be made available for this one-time grant program. Cal EMA will award the Northern California Innocence Project (NCIP) \$1,925,000 and the California Innocence Project (CIP) \$500,000 to implement the Program. The program's performance period is November 1, 2009 through April 30, 2011, and may be extended contingent on federal approval.

Enclosed is the Request for Application (RFA) and its accompanying instructions. Please review and complete the application thoroughly before responding. The completed application must be submitted to Cal EMA by **December 14, 2009**.

We appreciate your full cooperation and look forward to the successful implementation of this program. If you have any questions concerning this process, please contact Darren Tsang, Program Specialist with the Crime Suppression Section at (916) 324-9199 or at darren.tsang@oes.ca.gov.

Sincerely,

Brendan A. Murphy
Director of Grants Management

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM

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CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM

PART I – OVERVIEW

- A. INTRODUCTION
 - B. CONTACT INFORMATION
 - C. APPLICATION DUE DATE AND SUBMISSION OPTIONS
 - D. ELIGIBILITY
 - E. FUNDS
 - F. PROGRAM INFORMATION
-

A. INTRODUCTION

This Request for Application (RFA) provides the information and forms necessary to prepare an application for the California Emergency Management Agency (Cal EMA) grant program. The terms and conditions described in this RFA supersede previous RFAs and conflicting provisions stated in the *Recipient Handbook*. The *Recipient Handbook* provides helpful information for developing the application and is accessible on our website at www.CalEMA.ca.gov. Look on the left side of the Cal EMA homepage under “Quick links” for the *Criminal Justice Programs Recipient Handbook* or scroll over the “Justice Programs” tab, select “Grant Applications & Proposals (RFAs/RFPs),” and then look under the “Related Links” section for *Recipient Handbooks*.

B. CONTACT INFORMATION

Questions concerning this RFA, the application process, or programmatic issues should be submitted by telephone, fax, or e-mail to:

Darren Tsang
Criminal Justice Specialist
Crime Suppression Section
Work: (916) 324-9199
Fax: (916) 323-1756
E-Mail: (916) darren.tsang@oes.ca.gov

C. APPLICATION DUE DATE AND SUBMISSION OPTIONS

One original and two copies of the application must be delivered to Cal EMA’s Law Enforcement and Victim Services Division by the date and time indicated below. Submission options are:

Regular or overnight mail, postmarked by **DECEMBER 14, 2009** OR hand delivered by 5:00 p.m. on **DECEMBER 14, 2009** to:

California Emergency Management Agency
Public Safety and Victim Services Programs
3650 Schriever Avenue
Mather, CA 95655
Attn: Crime Suppression Section; California Postconviction DNA Testing Assistance Program

D. ELIGIBILITY

Only *The Northern California Innocence Project* and *The California Innocence Project* are eligible to receive funds through Cal EMA under this grant program.

The Northern California Innocence Project (NCIP) is a clinical program operating within the Santa Clara University School of law. NCIP provides legal representation to selected California prisoners who raise claims of factual innocence.

California Western School of Law is home to *The California Innocence Project* (CIP). CIP is a law school clinical program dedicated to the release of wrongfully convicted California inmates.

Geographically, NCIP reviews convictions that originated in Northern California from Monterey, Kings, Tulare and Inyo Counties and north. CIP reviews inmate convictions that originated in Southern California from San Luis Obispo, Kern and San Bernardino Counties and south.

E. FUNDS

Funding for the California Postconviction DNA Testing Assistance Program (CADNAP) comes from Cal EMA through the United States Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ). The program has a 12-month funding cycle with the possibility of extending it to 18 months.

The amount of \$2,425,000 will be made available for this one-time grant program. The grant period will be November 01, 2009 through April 30, 2011. Due to an eighteen month grant performance period, the applicant must submit two separate budgets.

All awards under this Postconviction DNA Program are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law. Unless otherwise expressly authorized in writing by Cal EMA and NIJ, the use of funds provided under this award is limited to case review, location of evidence, and DNA analysis of biological evidence.

F. PROGRAM INFORMATION

The goal of this program is to identify and review postconviction cases of forcible rape, murder and non-negligent manslaughter “where DNA test results would raise a reasonable probability that, in light of all the evidence, the convicted person’s verdict or sentence would have been different.”

The intent of the CADNAP is to help defray the costs associated with postconviction deoxyribonucleic acid (DNA) testing. Funding shall be used for case review of postconviction cases that involve crimes of forcible rape, murder, and non-negligent manslaughter. In addition, the two innocence projects eligible for funding under this program must certify compliance to the **Special Conditions** found in Part IV, Attachments.

Pursuant to Penal Code §1405 (see attachment), “a person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic DNA testing.”

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM

PART II – RFA INSTRUCTIONS

- A. PREPARING AN APPLICATION
 - B. PROJECT NARRATIVE
 - C. PROJECT BUDGET
 - D. APPLICATION APPENDIX
-

A. PREPARING AN APPLICATION

The instructions in this section correspond to each of the application components and to the forms required to complete the application.

The applicant must use the forms provided in Part IV of this RFA or on our website at www.CalEMA.ca.gov. The forms must be printed on plain white 8½" x 11" paper for the application. The Project and Budget Narrative templates provided on the website are formatted to Cal EMA standards. If you create your own Project and/or Budget Narrative forms, the format must duplicate the Cal EMA templates and not allow for more space than provided by Cal EMA. If a space limitation is specified for a component, strict adherence to the space limitation is required.

Please provide the nine required application components in the order listed below:

- Application Cover Sheet (included in Part IV)
- Grant Award Face Sheet (Cal EMA 2-101)
- Project Contact Information (Cal EMA 2-102)
- Signature Authorization and Instructions (Cal EMA 2-103)
- Certification of Assurance of Compliance (Cal EMA 2-104)
- Federal Grant Funds Log (Cal EMA 2-105)
- Project Narrative (Cal EMA 2-108)
- Project Budget (Including the Budget Narrative (Cal EMA 2-107) and the Budget Forms (Cal EMA 2-106 a-c))
- Special Conditions Certification (included in Part IV)

NOTE: Please pay special attention to the required forms. Failure to submit the correct form will result in the application being returned.

Copies of the application must be assembled separately and individually fastened in the upper left corner.
Do not bind the application.

B. PROJECT NARRATIVE

The project narrative is the main body of information describing the problem to be addressed, the plan to address the identified problem through appropriate and achievable objectives and activities, and the ability of the applicant to implement that plan.

The project narrative is divided into three sections: (1) Problems Statement, (2) Plan, and (3) Capabilities.

1. Problem Statement

The purpose of the problem statement is to persuasively illustrate the applicant's current needs and the problem to be addressed. Projects should provide a description of their service area. Using statistical data and other sources of information, projects should outline their need for funding and how this funding opportunity will help defray the costs associated with Postconviction DNA testing of crimes involving forcible rape, murder and nonnegligent manslaughter cases wherein the person that was prosecuted for the crime actual innocence might be demonstrated.

2. Plan

Plan: This section of the application should thoroughly describe the project's Plan to affect the problem. For example, projects should describe how they will determine CADNAP case eligibility (using provisions outlined in California Penal Code §§ 1405 and 1417.9), and what criteria they will use to make that determination; how the project will secure the probative biological evidence material to initiate a program-specific case review; how the project will select a forensic laboratory to conduct testing of biological evidence; and how the project will use the results from testing the biological evidence to meet program goals and objectives.

Objectives and Activities: This section of the application describes the objectives and activities the project will work to achieve when fulfilling its responsibility meeting each CADNAP goal. Under each objective listed below, describe the activities that will be undertaken by the awarded project toward achieving the anticipated results (goals) during the course of the 12-month grant award period. Under each objective, describe the activities that the project will take in addition to the predicted results that will be achieved during the 12-month grant award period. **Note: objectives and activities implemented for this grant award period must be comprehensive, measurable and realistic.**

Each CADAP project is required to maintain a detailed record-keeping mechanism that charts all the steps taken beginning with the distribution of questionnaires up to and including the DNA testing results and whether or not those results led to an inmate's exoneration.

Performance objectives for this RFA are as follows:

Objective #1: List the number of anticipated qualifying questionnaires that will be sent and received annually.

Objective #2: List the number of postconviction cases of forcible rape, murder and nonnegligent manslaughter that the project anticipates will be a CADNAP-qualifying case.

Objective #3: List the anticipated number of CADNAP-qualifying cases that will be referred to CIP or NCIP where DNA testing results support a claim of innocence.

Objective #4: List the number of biological evidence-holding agencies anticipated to be contacted with an evidence preservation letter.

Objective #5: List the number of anticipated qualifying cases that may yield probative DNA evidence.

Objective #6: List the number of anticipated cases in which a DNA expert will be solicited for assistance.

Objective #7: List the anticipated number of CADNAP-qualifying cases that will have testable evidence that would raise a reasonable probability of a more favorable result for the inmate.

Objective #8: List the anticipated number of solicitations for cooperation of prosecutors in obtaining testing of relevant biological material.

Objective #9: List the anticipated number of motions that that will be filed and litigated pursuant to Penal Code section 1405.

Objective #10: List the anticipated number of inmates that will be exonerated as a result of this program.

Additional Objective for NCIP Only (#11): NCIP will produce a comprehensive statistical final report and narrative detailing the CADNAP program. This report will be used to share the CADNAP data, program results and policy recommendations drawn from the project's professional relationship working with law enforcement, prosecutors, laboratory officials, defense attorneys, courts and researchers.

Additional Data/information that the two CADNAP projects may be required to report on include but are not limited to:

- a. The number of cases closed as a result of a determination that postconviction DNA testing is not appropriate.
- b. The reason as to why a case for postconviction testing was deemed not appropriate.
- c. The number of biological evidence-holding agencies contacted that responded with information indicating the biological evidence sought was available.
- d. The number of biological evidence-holding agencies contacted that responded with information indicating the biological evidence sought was disposed of or destroyed.
- e. The number of biological evidence sought was unavailable as a result of contamination.
- f. The number of CADNAP-eligible cases where the principal parties stipulate to postconviction DNA testing without having to litigate.
- g. The number of DNA testing motions granted over opposition.
- h. The number of motions filed with the trial court pursuant to Penal Code section 1405 seeking DNA testing that resulted in the court denying the motion.
- i. The number of government entities once notified of the DNA testing motion objected to that motion by filing a responsive pleading.
- j. Identify which testing technology was used (e.g., STRs, Y-STRs, mtDNA).
- k. The number of CADNAP-eligible cases where there was sufficient biological evidence available to conduct DNA analysis, analysis was subsequently performed and then retested using a different scientific methodology.
- l. The name of the laboratory that conducted DNA testing under the CADNAP.
- m. The number of cases in which the prosecutor or his office was contacted regarding DNA test results that suggest innocence.

3. Capabilities

Applicants must describe their organization and refer to an organizational chart. Applicants should describe how the awarded grant funds will enable them to achieve CADNAP's enumerated goals. Applicants must also provide both detailed information and data relative to how they will implement the program's intent, given the requirements and guidelines provided in this application. Describe how the law students working on the CADNAP were selected and how they will be supervised during the course of their casework.

The applicant must formalize partnerships with organizations and/or entities through a signed Memorandum of Understanding (MOU), or otherwise referred to as an Operational Agreement (OA). Cal EMA *Recipient Handbook* section 4100 et seq. defines an OA as a formal agreement

between a Recipient and one or more participating agencies. Adding, the OA reflects the roles each agency will play in achieving the goals of the project. To properly structure an OA, we recommend consulting the 2009 Cal EMA *Recipient Handbook*.

C. PROJECT BUDGET

The purpose of the project budget is to demonstrate how the applicant will implement the plan with the funds available through this program. The budget is the basis for management, fiscal review, and audit. Project costs must be directly related to the objectives and activities of the project. The budget must cover the entire grant period. In the budget, include **only** those items covered by grant funds. Projects may supplement grant funds with funds from other sources. However, since approved line items are subject to audit, applicants should not include in the project budget matching funds (if applicable) in excess of the required match. Budgets are subject to Cal EMA modifications and approval.

Cal EMA requires the applicant to develop a **line item** budget which will enable the project to meet the intent and requirements of the program and ensure the successful and cost effective implementation of the project. The applicant should prepare a realistic and prudent budget avoiding unnecessary or unusual expenditures which detract from the accomplishment of objectives and activities of the project.

Note: Please also refer to Part IV, Attachments, Special Conditions in the preparation of the budget.

- Strict adherence to required and prohibited items is expected.
- Where the applicant does not budget for a required item, the applicant assumes responsibility.
- Failure of the applicant to include required budget items does not eliminate responsibility to comply with those requirements during the implementation of the project.

The applicant should refer to the *Recipient Handbook* for additional information concerning Cal EMA budget policy or to determine if specific proposed expenses are allowable. The *Recipient Handbook* is accessible on our website at www.CalEMA.ca.gov. Look on the left side of the Cal EMA homepage under “Quick links” for the *Criminal Justice Programs Recipient Handbook* or scroll over the “Justice Programs” tab, select “Grant Applications & Proposals (RFAs/RFPs),” and then look under the “Related Links” section for *Recipient Handbooks*. Should you have additional budget questions, contact the person listed in Part I, B.

1. Budget Narrative

The applicant is required to submit a narrative with the project budget. The narrative must be typed and placed in the application preceding the budget pages, describing:

- how the project's proposed budget supports the Program's objectives and activities;
- how funds are allocated to minimize administrative costs and support direct services;
- the duties of project-funded staff, including qualifications or education level necessary for the job assignment (this does not take the place of the brief justification required in the line item budget);
- how project-funded staff duties and time commitments support the proposed objectives and activities;
- proposed staff commitment/percentage of time to other efforts, in addition to time allocated to this project;
- the necessity for subcontracts and unusual expenditures; and
- the mid-year salary range adjustments.

2. Specific Budget Categories

In Part IV of this RFA, or on our website, you can access Excel spreadsheets for each of the following three budget categories:

a. Personal Services – Salaries/Employee Benefits (Cal EMA 2-106a)

1) Salaries

Funds may **not** be used to pay salaries and/or benefits for existing staff, other than overtime as described below.

Funds may only be used for salaries and benefits of new full or part-time employees to the extent such employees are directly engaged in case review, location of evidence, or DNA analysis of biological evidence. Applicants must provide documentation that the additional new full or part-time employee(s) will be directly engaged in these activities.

Funds may also be used for overtime for existing people directly engaged in case review, location of evidence, or DNA analysis of biological evidence. Any payments for overtime must be in accordance with the applicable provision of the federal OJP Financial Guide, available at <http://ojp.usdoj.gov/financialguide/>.

Salaries for staff not directly employed by the applicant must be shown as participating staff (see *Recipient Handbook*, Section 4500) in the Operating Expenses Category. Consultant services remain under Operating Expenses (refer to Part II, B.2.b. - Operating Expenses - paragraph two.)

2) Benefits

Employee benefits must be identified by type and percentage of salaries. The applicant may use fixed percentages of salaries to calculate benefits. Budgeted benefits cannot exceed those already established by the applicant.

Employer contributions or expenses for social security, employee life and health insurance plans, unemployment insurance, and/or pension plans are allowable budget items. Benefits, such as uniforms or California Bar Association dues are allowable budget items if negotiated as a part of an employee benefit package.

A line item is required for each different position/classification, but not for each individual employee. If several people will be employed full-time or part-time in the same position/classification, provide the number of full-time equivalents (e.g., three half-time clerical personnel should be itemized as 1.5 clerical positions).

b. Operating Expenses (Cal EMA 2-106b)

Operating expenses are defined as necessary expenditures other than personal salaries, benefits and equipment. Such expenses may include specific items directly charged to the project, and in some cases, when permitted by the funding source, an indirect cost allowance. The expenses must be grant-related (i.e., to further the program objectives as defined in the grant award) and be encumbered during the grant period.

The following items fall within this category: consultant services such as subcontractors, participating staff who are not employed by the applicant, travel, office supplies, training

materials, equipment maintenance, software equipment rental/lease, telephone, postage, printing, facility rental, vehicle maintenance, answering service fees and other consumable items. Furniture and office equipment with an acquisition cost of less than \$5000 (including tax, installation, and freight) and/or with a useful life of less than one year fall within this category. Otherwise, these fall under equipment expenses.

Salaries for staff not directly employed by the applicant must be shown as consultant and/or participating staff costs (whichever is applicable per *Recipient Handbook* Sections 3710 and 4500), under the Operating Expenses category. These costs must be supported by an Operational Agreement (OA) or a contract for services, which must be kept on file by the recipient and made available for review during a Cal EMA site visit, a monitoring visit, or an audit. In the case of grants being passed through a recipient to be operated by another agency, the staff from the second agency will be shown in the Operating Expenses Category.

The applicant must include sufficient per diem and travel allocations for person(s) to attend required Cal EMA training conferences or workshops.

c. Equipment (Cal EMA 2-106c) (formerly OES A303c)

Equipment is defined as nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit (including tax, installation, and freight).

A line item is required for different types of equipment, but not for each specific piece of equipment (e.g., three laser jet printers must be one line item, not three).

NOTE: The left column of each budget category on the Spreadsheet requires line item detail including the calculation and justification for the expense. Enter the **whole dollar amount only** (no cents) on each line item and the match amount (if applicable) in the correct column of the Budget Category form. You may add extra rows if necessary. The spreadsheets automatically calculate the subtotal at the end of each budget category and provide the total of the three spreadsheets at the bottom of the Equipment page.

The total of the budget including each funding source and/or match amount must correspond to the amount of the Total Project Cost (Block 10G) on the Grant Award Face Sheet.

D. APPLICATION APPENDIX

The application appendix provides Cal EMA with additional information from the applicant to support components of the application.

The following must be included:

- **Organizational Chart:**
The Organizational Chart should clearly depict the structure of the applicant organization and the specific unit within the organization responsible for the implementation of the project. This chart should also depict supporting units within the organization (e.g., the Accounting Unit) and the lines of authority within the organization. Job titles on the Organizational Chart must match those in the Budget and Budget Narrative.
- **Operational Agreement (OA):**
OAs must contain original signatures, titles, and agency names for both parties and include dates effective for the proposed grant period. These documents must demonstrate a formal system of

networking and coordination with other agencies and the applicant. A sample OA can be accessed by selecting the title above.

- Special Conditions Certification

And if applicable:

- Noncompetitive Bid Request (Cal EMA 2-156)
- Computer and Automated Systems Purchase Justification Guidelines (Cal EMA 2-157)

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM

PART III – POLICES AND PROCEDURES

NOTE: The applicant is strongly encouraged to review the following sections before preparing the application.

- A. FINALIZING THE GRANT AWARD AGREEMENT
 - B. ADMINISTRATIVE REQUIREMENTS
 - C. BUDGET POLICY
-

A. FINALIZING THE GRANT AWARD AGREEMENT

1. Standard Project Funding Authority

Allocation of funds is subject to the availability of appropriated funds awarded to Cal EMA and to any modification or additional requirement that may be imposed by law. Cal EMA does not have the authority to disburse funds until the Grant Award Agreement from NIJ is fully executed. Expenditures incurred prior to such authorization are made at the project's own risk and may be disallowed.

If, during the term of the grant award, the federal funds appropriated for the purposes of the grant award are reduced or eliminated by the United States Government, or in the event revenues are not collected at the level appropriated, Cal EMA may immediately terminate or reduce the grant award by written notice to the recipient. However, no such termination or reduction shall apply to allowable costs already incurred by the recipient to the extent federal funds are available for payment of such costs.

Cal EMA Grant Award Agreements are subject to applicable restrictions, limitations, or conditions enacted by the United States Government, subsequent to execution of the Grant Award Agreement.

2. Processing Grant Awards

a. Grant Award Conditions

Cal EMA may add grant award conditions to the Grant Award Agreement prior to or after funding. If conditions are added, these will be discussed with the applicant and a copy of the conditions will be sent to the grant recipient when the conditions are made part of the Grant Award Agreement. Grant award conditions may include requirements for sole source justification, a computer feasibility study, or other requirements deemed necessary by Cal EMA.

b. Grant Award Agreement

A copy of the executed Grant Award Agreement and pertinent attachments will be sent to the Project Director. The applicant is not authorized to incur costs against the grant until a copy of the fully executed Grant Award Agreement is received. When the executed grant is received a Report of Expenditures and Request for Funds (Cal EMA 2-201) may be submitted for reimbursement.

c. Grant Award Amounts

When the amount of funds available is limited, Cal EMA may reduce the amount of the grant award from the amount requested by the applicant. In addition, Cal EMA reserves the right to

negotiate budgetary changes with the applicant prior to executing the Grant Award Agreement. If either of these actions is required, Cal EMA will notify the applicant prior to executing the Grant Award Agreement.

B. ADMINISTRATIVE REQUIREMENTS

The following requirements apply to projects selected for funding and are explained below for the recipient's planning purposes.

1. The *Recipient Handbook (RH)*

The *Recipient Handbook* is accessible on our website at www.CalEMA.ca.gov. Look on the left side of the Cal EMA homepage under 'Quick links' for the Criminal Justice Programs Recipient Handbook or scroll over the "Justice Programs" tab, select "Grant Applications & Proposals (RFAs/RFPs)," and then look under the "Related Links" section for "*Recipient Handbooks*". The *Recipient Handbook* contains administrative information and requirements necessary to implement the project. Recipients must administer their grants in accordance with the *Recipient Handbook* requirements. Failure to comply with these requirements can result in the withholding or termination of the grant award.

2. Office of Justice Programs Financial Guide

We strongly encourage you to review the Office of Justice Programs, Department of Justice (DOJ) Financial guide prior to submitting your application as well as for the ongoing administration of your grant. Additional information for each requirement can be found at <http://ojp.usdoj.gov/funding/otherrequirements.htm>.

3. Internet Access (*RH 11500*)

Funded projects are required to maintain Internet access with an established e-mail address. Grant funds may be used for this purpose unless specifically prohibited by the RFA instructions.

4. Progress Reports and Data Collection (*RH 10100*)

Funded projects are required to participate in data collection and to submit periodic program-specific and comprehensive progress reports. Funded projects are required to maintain accurate records to document the information reported in the progress reports that reflects their meeting program objectives. Program-specific records should be made available for inspection upon demand. The records must be kept by the project for a period of three years. During site/monitoring visits, Cal EMA will review these records for accuracy and compare them with the reported data submitted on the progress reports. A 90-day status report detailing the activities during the implementation period is required for all grant funded projects. Additionally, all projects will submit a six-month progress report covering the first six months of grant activity, and a final progress report, which covers the entire 12-month period. Progress Reports may be deemed overdue 30 days following the end of each reporting period.

5. Monthly/Quarterly Report of Expenditures/Request for Funds (*RH 6300*)

Government and education agencies receiving awarded funds will be required to submit a monthly Report of Expenditures and Request for Funds (Cal EMA 2-201) report on a quarterly basis. This form is due 30 calendar days from the end of the reporting period, and must be submitted whether or not the project has incurred expenses. Delays in submitting the form Cal EMA 2-201 will result in the withholding of funds and may result in the recommendation to Cal EMA's Executive Secretary for termination of the grant award.

6. Technical Assistance/Site Visits (*RH 10300*)

Funded projects are assigned a Cal EMA program specialist to oversee the progress of the project in achieving its goals, objectives and compliance with the Grant Award Agreement. Program specialists are available to assist the recipient in the successful implementation of the project and in meeting the administrative requirements of the Grant Award Agreement. New projects should expect a site visit from the assigned program specialist within the first six months of the grant period. Follow-up site visits will be conducted periodically throughout the life of the grant. Projects may request a site visit to obtain technical assistance.

7. Monitoring Requirements (*RH 10400*)

A monitoring visit is an onsite assessment by staff to determine if the project is in compliance with the terms of the program, the Grant Award Agreement, the Program Guidelines, the RFA/RFP, and the Recipient Handbook. Projects will be monitored on a random or as-needed basis.

8. Audit Requirements (*RH 8100*)

To safeguard Cal EMA assets and to ensure that all funds are accounted for, Cal EMA requires that organizations receiving Cal EMA grant award(s) be audited in accordance with Recipient Handbook section 8100.

9. Source Documentation (*RH 10111*)

Recipients will be required to maintain source documentation to support claimed expenditures and project accomplishments. Source documentation is defined, but not limited to records used to validate project activities and achievements pertaining to the objectives outlined in the Grant Award Agreement. Recipients are to retain source documentation for progress reports on a quarterly basis, regardless of submission requirements. Requirements and definitions for program specific source documentation are delineated in the RFA instructions. Recipients will be required to have written job descriptions on file for positions funded by Cal EMA detailing specific grant-related activities to achieve project objectives.

10. Copyrights, Rights in Data, and Patents (*RH 5300-5400*)

Cal EMA owns rights of and reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use, in whole or in part, material produced by activities supported by a Grant Award Agreement. These ownership rights are detailed in the Recipient Handbook.

C. BUDGET POLICY

This document summarizes information on Cal EMA Budget Policy contained in the *Recipient Handbook*. Additional information may be obtained by accessing the Recipient Handbook at www.CalEMA.ca.gov. Look on the left side of the Cal EMA homepage under “Quick links” for the *Criminal Justice Programs Recipient Handbook*, or scroll over the “Justice Programs” tab, select “Grant Applications & Proposals (RFAs/RFPs),” and then look under the “Related Links” section for *Recipient Handbooks*.

1. Supplanting Prohibited (*RH 1330*)

Grant funds must be used to supplement existing funds for program activities and *not replace* funds appropriated for the same purpose. If selected for funding, a written certification must be provided to Cal EMA indicating grant funds will not be used to supplant existing funds. Potential supplanting will be the subject of application review, post-award monitoring, and audit. The rules on supplanting are found in Section 1330 of the *Recipient Handbook*.

2. Project Income (*RH 6610*)

Project income, such as client fees and fees for services provided by the recipient (i.e., training, presentations, etc.), asset forfeitures, profits from the sale of project products, and conference proceeds as the result of a direct trade of time or products for money must be used to offset or augment the grant, unless otherwise specified in the RFA instructions. Project income cannot be used as matching funds, unless otherwise specified in the RFA instructions.

3. Methods of Contracting and/or Procurement (*RH 3400*)

A competitive bid process is required to purchase equipment or consultant services with grant funds. Noncompetitive bid contracts are disfavored. Noncompetitive bid request approval by Cal EMA program staff is required prior to the purchase of equipment in excess of \$5,000, or to hire a specific consultant charging over \$5,000. Local units of government may use their approved procurement policy except for contracts over \$50,000, which require prior Cal EMA approval. For organizations without a written procurement policy, a competitive bid process involves determining the specifications for the items needed and obtaining at least three bids from different vendors. Whenever a specific individual/organization name is identified in the project budget, a narrative describing the competitive bid process or a sole-source procurement (noncompetitive bid) request will be required. Cal EMA will provide assistance in submitting a noncompetitive bid request if the proposal is selected for funding and if Cal EMA determines it is in the best interest of the project. These procedures do not apply to funds shared with participating agencies under the terms of an Operational Agreement (see Section 4500, *Recipient Handbook*).

4. Travel Policies (*RH 2236*)

The following is Cal EMA's current travel policy:

a. Travel and Per Diem (*RH 2236*)

The applicant may prepare the budget using its own travel policy or the state travel policy according to the following guidelines. Travel reimbursement will only be allowed based on actual costs.

1) Units of Government

Units of government may use their own written travel policy or the state policy.

2) Community-Based Organizations (CBOs)

A community-based organization may use the state travel policy or the applicant's written policy up to the maximum rates allowed by the state travel policy.

b. State Travel and Per Diem Policy (*RH 2236.2*)

Use the following state travel policy for budgeting travel expenses:

1) Out-of-State Travel

Out-of-state travel is restricted and only allowed in exceptional situations. Requests for approval for out-of-state travel must be submitted for Cal EMA approval.

2) Meals and Incidentals

a) Breakfast \$6.00

Breakfast may be claimed when travel commences at or prior to 6:00 a.m.

Breakfast may be claimed on the last fractional day of a trip of more than 24 hours if travel terminates at or after 8:00 a.m.

b) Lunch \$10.00

Lunch may not be claimed for travel less than 24 hours. Lunch may be claimed if the trip begins at or before 11:00 a.m. and may be claimed on the last fractional day of a trip of more than 24 hours if the travel terminates at or after 2:00 p.m.

c) Dinner \$18.00

Dinner may be claimed if the trip begins at or before 5:00 p.m. Dinner may be claimed when travel terminates at or after 7:00 p.m., whether on a one-day trip or on the last day of a trip of more than 24 hours.

d) Incidentals \$6.00

Incidentals may be claimed for trips of 24 hours or more.

e) Total Per Diem

The maximum is \$40.00 for a 24-hour period.

3) Lodging

The maximum allowed lodging expense is \$84.00, plus applicable taxes, (except as noted below). Lodging receipts are required for reimbursement.

4) Special Lodging Rates

The maximum allowed lodging rate in Los Angeles and San Diego counties is \$110.00, plus applicable taxes. The maximum for Alameda, San Francisco, San Mateo, and Santa Clara counties is \$140.00, plus applicable taxes.

5) Mileage

When a privately owned vehicle is utilized on project-related business, a maximum of 55.5 cents per mile is allowed, unless a higher rate is justified. Documentation justifying a higher rate must be on file and available for audit, but should not be submitted with the application.

6) Other

Taxi, airport shuttle, etc., which exceed \$3.50 must be supported by receipt. Parking in excess of \$10.00 must be supported by receipt.

5. Participating Staff (RH 4500)

The term "participating staff" refers to salaried employees of a participating agency assigned to work with the recipient on the implementation of a project. The agreement between the recipient

and the participating agency concerning participating staff must be reflected in the OA. Grant related costs associated with participating staff must be itemized in the Operating Expenses category of the grant budget.

6. Independent Contractor/Consultant Services (*RH 3710*)

Consultant services are provided on a contractual basis by individuals or organizations not directly employed by the applicant. Independent contractors must not be used in lieu of employees. Independent contractors are defined as individuals or organizations meeting some or all of the following criteria:

- produce a specific product or service;
- work independently without direct supervision from the applicant;
- work on specific projects;
- provide services for a limited number of hours or period of time; and/or
- have no agency management or oversight responsibilities directed toward the financial success or direction of the agency.

a. Rates (*3710.1*)

The maximum rate for independent contractors is \$250.00 per hour (excluding travel and subsistence costs). Compensation over \$250.00 per hour requires additional justification and **prior approval** from Cal EMA.

1) Independent Contractors Employed by State and Local Government

Compensation for independent contractors will be allowed when the unit of government will not provide its services without cost. In these cases, the rate of compensation is not to exceed the daily salary rate paid by the unit of government.

b. Expert Witness Fees (*RH 3710.2*)

Projects, which routinely utilize “expert witnesses” as independent contractors to conduct evaluations and provide expert testimony in the courtroom, may budget for this expense. However, the project may only be charged for costs above what the jurisdiction is required to cover. The maximum allowable rate for such witness fees is \$250.00 per hour up to \$2,000 per day. The total amount budgeted for expert witness fees must not exceed ten percent (10%) of the project’s total budget. Requests for proposed expert witness costs must be accompanied by written justification indicating the following:

- qualifications, training, and experience of the expert(s), including a statement regarding recognition by the court of the individual as an expert;
- specialized certification/licensure [e.g., Masters in Social Work (MSW); Licensed Clinical Social Worker (LCSW), Marriage and Family Therapist (MFT); Medical Doctor (MD)];
- rate of pay per hour including documentation of a survey of the availability of similar consultants, the current “going rate,” and the proposed rate of pay with a cost breakdown if expert is paid according to services (e.g., mileage, waiting time, court testimony);
- proposed services to be provided (e.g., analysis of forensic evidence, psychological evaluation); and

- justification why this cost cannot be paid with other funds [attach the justification to Cal EMA 2-106 (formerly OES A303b)].

7. Facility Rental (*RH 2232*)

Up to \$21.00 per square foot annually (\$1.75 per square foot per month) is allowed for facility rental. If the rental cost for office space exceeds this rate, it must be consistent with the prevailing rate in the local area. This documentation must be on file and available for audit and should not be submitted with the application.

a. Rental Space for Training and Counseling Rooms (*RH 2232.1*)

Rental space for training and individual and/or group counseling rooms may also be charged to the grant, providing the charge is based on actual costs and not reimbursed by another source.

8. Rented or Leased Equipment (*RH 2233*)

An explanation and cost analysis is required when equipment is rented or leased. This analysis must demonstrate that it is more cost-effective to rent or lease the equipment than it is to purchase it, and must be approved by Cal EMA prior to the execution of a rental or lease agreement.

9. Indirect Costs/Administrative Overhead (*RH 2220*)

Indirect costs are those not readily itemized or assignable to a particular project, but necessary to the operation of the organization and the performance of the project. The costs of operating and maintaining facilities, accounting services, and administrative salaries are examples of indirect costs. Flat rates not exceeding ten percent (10%) of personnel salaries (excluding benefits and overtime) or five percent (5%) of total direct project costs (excluding equipment) may be budgeted by the applicant for indirect costs, if allowable by the funding source.

10. Audits (*RH 8150*)

Recipients expending between \$25,000 and \$499,999 in federal or state funds annually cannot use federal funds to reimburse for costs associated with audits. Recipients expending \$500,000 or more in federal grant funds annually are required to secure an audit pursuant to OMB Circular A-133 and are allowed to utilize federal grant funds to budget for the audit costs.

Specifically, the allowable audit costs are as follows:

- if the total project cost is less than or equal to \$150,000, the project may budget up to \$2,000 for the financial audit cost; or
- if the total project cost is greater than \$150,000, the project may budget up to one and a half percent (1.5%) of the total grant for financial audit costs.

11. Equipment (*RH 2300*)

Equipment is defined as nonexpendable tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit (including tax, installation and freight).

A line item is required for different types of equipment, but not for each specific piece of equipment (e.g., three laser jet printers should be one line item, not three).

a. Allowable Expenses

Equipment used solely for project activities may be budgeted if it is essential to the implementation of the project. Grant funds may not be used to reimburse the recipient for equipment already purchased.

Rented or leased equipment must be budgeted as an Operating Expense. Lease-to-purchase agreements are generally not allowable. If a lease-to-purchase is requested, the project will be required to submit justification, including cost-effectiveness, with the Grant Award Forms Package. Prior approval by Cal EMA is required.

b. Computers and Automated Equipment (*RH 2340*)

1) Community-Based Organizations (*RH 2342.1*)

Community-based organizations may budget up to \$25,000 in computer equipment, software, and related costs. Justification will be required if the proposal is selected for funding. Cal EMA will evaluate the proposed purchase on the basis of grant-related need. Prior approval by Cal EMA is required.

2) Units of Government (*RH 2342.2*)

Units of government may budget for computer equipment, software, and related costs. Justification will be required if the proposal is selected for funding. Cal EMA will evaluate the proposed purchase on the basis of grant-related need. Cal EMA must give approval prior to purchase. If federal grant funds totaling in excess of \$100,000 are used for automated data processing purchases, prior federal approval is also required.

3) Computer Purchase Justification (*RH 2341*)

Approval for purchases of computers and automated equipment is contingent on the applicant's ability to demonstrate cost-effective, project-related need which is best demonstrated by clearly relating each computer system or component to the grant objectives and activities. If selected for funding, the applicant will be sent instructions for preparing the justification.

c. Automobiles (*RH 2331*)

Automobiles are not allowable items unless permitted by the terms of the program. If an automobile is included in the budget, substantial justification demonstrating the grant-related need will be required before finalization of the Grant Award Agreement. The justification must describe the need for the automobile, including the size of service area, the need to provide direct service away from the office, and the reason why the agency will not allow personal automobile usage during work hours. A cost analysis for automobile purchase, as compared to other options including lease and personal automobile use and mileage, must be done and kept on file for review by Cal EMA program staff during a site visit, monitoring visit, and/or audit.

12. Prohibited Expense Items (*RH 2240*)

a. Bonuses and Commissions (*RH 2241*)

Projects are prohibited from paying any bonus or commission to any individual, organization or firm unless specifically authorized by the terms of the program.

b. Lobbying (*RH 2242*)

Refer to *RH 2242.1* for an extensive list of prohibited activities.

c. Fundraising (*RH 2243*)

Cal EMA grant funds cannot be used for organized fundraising including financial campaigns, endowment drives, solicitation of gifts and bequests, or similar expenses incurred solely to raise capital or obtain contributions.

d. Real Property and Improvements (*RH 2244*)

Real property, including land, land improvements, structures and their attachments, and structural improvements and alterations are not allowable expenditures unless specifically authorized in the RFA instructions.

e. Interest (*RH 2245*)

The cost of interest payments is not an allowable expenditure, unless the cost is a result of a lease/purchase agreement.

f. Charges, Fees, and Penalties (*RH 2245*)

Finance charges, late payment fees, penalties, and returned check charges are not allowable expenditures.

g. Food and Beverages (*RH 2246*)

The cost of food and/or beverages at grant-sponsored conferences, meetings or office functions is not an allowable expenditure.

h. Weapons and Ammunition (*RH 2247*)

The cost of weapons and/or ammunition of any type is not an allowable expenditure, unless it is part of a governmental negotiated benefit package or is specifically authorized in the RFA instructions.

i. Membership Dues (*RH 2248*)

The cost of membership dues for the licensing or credentialing of professional personnel is not an allowable expenditure unless it is part of a governmental negotiated benefit package or is specifically authorized in the RFA instructions.

j. Professional License (*RH 2248*)

The cost of a professional license is not an allowable expenditure unless specifically authorized in the RFA instructions.

k. Annual Professional Dues or Fees (*RH 2248*)

The cost of professional dues or fees is not an allowable expenditure unless it is part of a governmental negotiated benefit package or is specifically authorized by the RFA instructions.

I. Depreciation (*RH 2249*)

Equipment costs may not include additional costs calculated for depreciation.

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM

APPLICATION FORMS

Click on one of the links below to access the corresponding form. Save the form to your hard drive before filling it out. To access the complete list of forms go to www.CalEMA.ca.gov, scroll over the “Justice Programs” tab, select “Grant Applications & Proposals (RFAs/RFPs),” then look under the “Related Links” section for “Forms”. Or, paste the following link into your browser:

[http://www.oes.ca.gov/WebPage/oeswebsite.nsf/OESBranchContentPortal?ReadForm&type=Forms&look=Grant%20Applications%20and%20Proposals%20\(RFAs/RFPs\)&Div=Law+Enforcement+and+Victim+Services+\(LEVS\)&Branch=Grant%20Applications%20and%20Proposals%20\(RFAs/RFPs\)Forms](http://www.oes.ca.gov/WebPage/oeswebsite.nsf/OESBranchContentPortal?ReadForm&type=Forms&look=Grant%20Applications%20and%20Proposals%20(RFAs/RFPs)&Div=Law+Enforcement+and+Victim+Services+(LEVS)&Branch=Grant%20Applications%20and%20Proposals%20(RFAs/RFPs)Forms)

[Grant Award Face Sheet and Instructions \(Cal EMA 2-101\)](#)

[Project Contact Instructions and Information \(Cal EMA 2-102\)](#)

[Signature Authorization and Instructions \(Cal EMA 2-103\)](#)

[Certification of Assurance of Compliance \(Cal EMA 2-104\)](#)

[Federal Grant Funds Log \(Cal EMA 2-105\)](#)

[Application Budget \(Cal EMA 2-106\) – Budget Narrative \(Cal EMA 2-107\)](#)

[Budget Forms \(Excel spreadsheet format\) – b. Without Match](#)

[Project Narrative \(Cal EMA 2-108\)](#)

[Project Summary \(Cal EMA 2-150\)](#)

[Sample Operational Agreement \(Cal EMA 2-161\)](#)

[Noncompetitive Bid Request Checklist \(Cal EMA 2-156\)](#)

[Out-Of-State Travel Request \(Cal EMA 2-158\)](#)

[Other Funding Sources \(Cal EMA 2-151\)](#)

[Prior, Current, and Proposed Cal EMA Funding \(Cal EMA 2-152\)](#)

[Project Service Area Information \(Cal EMA 2-154\)](#)

[Computer and Automated Systems Purchase Justification \(Cal EMA 2-157\)](#)

[California Map \(Cal EMA 2-316\)](#)

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM**GLOSSARY OF TERMS**

TERM	DEFINITION
Activity	The specific steps or actions that a project takes to achieve a measurable objective.
Administrative Agency or Recipient	The agency or organization designated on the Grant Award Face Sheet (Cal EMA 2-101) is the programmatic Recipient of the grant funds and will accomplish the planned objectives and program goals. The Recipient was formerly referred to as the "Grantee".
Application	Once selected for funding, the original proposal plus any additional forms as required by Cal EMA becomes the application. This application, once signed by Cal EMA and the local government agency or organization authorized to accept grant funding, becomes the Grant Award/Grant Award Agreement (Cal EMA 2-101).
CFR	Code of Federal Regulations
Community-based Organization (CBO)	A nonprofit, public benefit corporation.
Competitive Bid	A contract process used when all suppliers are equally or nearly equally qualified to provide the services.
Equal Employment Opportunity Plan (EEOP)	A comprehensive plan that analyzes the agency's workforce and all agency employment practices to determine their impact on the basis of ethnicity and gender. The objective of the EEOP is to ensure nondiscrimination in all areas of employment (recruitment, hiring, promotions, etc), and in the delivery of services and benefits.
Equal Employment Opportunity (EEO) Checklists	An EEO Checklist is a document used by program staff while conducting site/monitoring visits. The checklists (A and B) were prepared to assist Cal EMA in verifying that recipients are in compliance with State and Federal Civil Rights Laws.
Grant Award Agreement	The signed final agreement between Cal EMA and the local government agency or organization authorized to accept grant funding. (See Application.)
Grant Funding Cycle	The number of years a program may be funded without competition. A funding cycle is typically three years.
Grant Funding Period	The period of time, determined by the Request for Proposal (RFA) or the Request for Application (RFA), which the project narrative, objectives, activities, and budget cover. The time period is usually one year, and is shown on the Grant Award Face Sheet (Cal EMA 2-101) (formerly OES A301).
Implementing Agency	The agency or organization designated on the Grant Award Face Sheet that is responsible for the day-to-day operation of the project (e.g., probation department, district attorney, sheriff).

Monitoring Report Response Form	Form sent to the Recipient with the Monitoring report. The form is completed by the Recipient and returned to the Cal EMA Local Assistance Monitoring Branch (LAMB), indicating the Monitoring Report is accurate or inaccurate as of the date of the Monitoring.
Noncompetitive Bid (NB)	A contract for goods or services, where only a single source that can provide the services or goods is afforded the opportunity to offer a price for the specified services or goods. (Contracts sometimes include goods as well as services, and this definition will also apply to those circumstances.)
Nonprofit Organization (aka Community-Based Organization)	<p>A nonprofit, public benefit corporation as defined in the federal regulation of 28 C.F.R. Part 38, Department of Justice. This modifies the need to be recognized by the Internal Revenue Service as a 501(c)(3) for recipients of faith-based organizations. All organizations may qualify for nonprofit status using any one of the four following methods:</p> <ol style="list-style-type: none">(1) Proof that the Internal Revenue Service recognizes the applicant has the status of a 501(c)(3).(2) A statement from a State taxing body or the State Secretary of State certifying that (i) the Organization is a nonprofit organization operating within the State; and (ii) No part of its net earnings may lawfully benefit any private shareholder or individual:(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or(4) Any item described in (1) through (3) if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.
Objectives	A set of quantifiable projections to be carried out in order to accomplish the program goals.
On Site	Refers to the location of operation of the grant award recipient. If multiple sites exist, the site that provides the project recipients with program direction qualifies as the "on site location."
Operational Agreement (OA)	A formal agreement between two or more agencies, which specifies the responsibilities of each agency in implementing the project. The term Operational Agreement also includes documents entitled Memorandum of Understanding, Letters of Intent, or other titles that serve the same purpose.
Participating Agency	An organization that receives grant funds through an Operational Agreement to participate in achieving the goals of a project. The participating agency must be a unit of government or a community-based organization.
Participating Staff	A salaried employee of a Participating Agency.
Program	A specific set of goals and objectives established pursuant to legislative, congressional, or administrative action identifying an unmet need of the criminal justice system or victim services and supported by a set

	appropriation from state or federal funding sources.
Project	The implementation of a Program by a Recipient. The project includes all of the grants implemented by the Recipient under that Program regardless of the year of implementation.
Proposal	The packet of forms and narrative as requested by the RFA and submitted to Cal EMA that specified the priorities, strategies, and objectives of the applicant.
Recipient Handbook	This handbook outlines the terms and conditions required of grant projects. Funded projects must administer their grants in accordance with these administrative and fiscal conditions. The <i>Recipient Handbook</i> is accessible at www.CalEMA.ca.gov . Look on the left side of the Cal EMA homepage under 'Quick links' for the Criminal Justice Programs Recipient Handbook or scroll over the "Justice Programs" tab, select "Grant Applications & Proposals (RFAs/RFPs)," and then look under the "Related Links" section for " <i>Recipient Handbooks</i> ". The <i>Recipient Handbook</i> was previously called the " <i>Grantee Handbook</i> ".
Request for Application (RFA)	The RFA is a noncompetitive process issued by Cal EMA to obtain applications from applicants previously selected for funding.
Request for Proposal (RFP)	The Request for Proposal is issued by Cal EMA to solicit competitive proposals in order to select projects for funding.
Single Source	This term has been replaced by the term "noncompetitive bid".
Sole Source	This term has been replaced by the term "noncompetitive bid".
Source Documentation	Records that validate project activities and achievements as they pertain to the objectives outlined in the Grant Award Agreement.
Supplanting	To reduce federal, state, or local funds because of the existence of Cal EMA funds. Supplanting occurs when a Recipient deliberately replaces its non-Cal EMA funds with Cal EMA funds, thereby reducing the total amount available for the stated purpose.
Terms of the Program	The applicable Program Guidelines, application requests [Request for Proposal (RFA)/Request for Application (RFA)], grant award agreement, Cal EMA policy statements, and applicable statutes. In the event the terms of the program are inconsistent with the provisions of this handbook, the terms of the program shall be interpreted and construed as superseding the provisions of this handbook.
USC	United States Code

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM**CHECKLIST**

This checklist is provided to ensure that a complete application is submitted to Cal EMA.

- ☐ APPLICATION COVER SHEET – Please complete and attach to the front of the application.
- ☐ GRANT AWARD FACE SHEET (CAL EMA 2-101) – Signed by the official authorized to enter into the Grant Award Agreement.
- ☐ PROJECT CONTACT INFORMATION (CAL EMA 2-102) – Must be submitted with the Grant Award Face Sheet.
- ☐ SIGNATURE AUTHORIZATION AND INSTRUCTIONS (CAL EMA 2-103) – Signatures of the Project Director and Fiscal Officer are required.
- ☐ CERTIFICATION OF ASSURANCE OF COMPLIANCE (CAL EMA 2-104) – Signed by the official who signed the Grant Award Face Sheet and by the official delegating that authority.
- ☐ FEDERAL GRANT FUNDS LOG (CAL EMA 2-105)
- ☐ PROJECT NARRATIVE (CAL EMA 2-108)
 - PROBLEM STATEMENT
 - PLAN AND CAPABILITIES
- ☐ PROJECT BUDGET
 - BUDGET NARRATIVE (CAL EMA 2-107)
 - BUDGET FORMS (EXCEL SPREADSHEET FORMAT) (CAL EMA 2-106 b. Without Match)
 - Personal Services – Salaries/Employee Benefits
 - Operating Expenses
 - Equipment
- ☐ APPLICATION ATTACHMENTS
 - Operational Agreement
 - Organizational Chart
 - Special Conditions Certification
 - Noncompetitive Bid Request Checklist (Cal EMA 2-156) – if applicable
 - Out-Of-State Travel Request (Cal EMA 2-158) – if applicable
 - Computer and Automated Systems Purchase Justification (Cal EMA 2-157) – if applicable

ARNOLD SCHWARZENEGGER
GOVERNOR

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CALIFORNIA EMERGENCY MANAGEMENT AGENCY

Application Cover Sheet

RFA PROCESS

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM

Submitted by:

(Place name, address, and phone number of applicant here.)

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM**PENAL CODE §1405**

- (a) A person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing.
- (b)
 - (1) An indigent convicted person may request appointment of counsel to prepare a motion under this section by sending a written request to the court. The request shall include the person's statement that he or she was not the perpetrator of the crime and that DNA testing is relevant to his or her assertion of innocence. The request also shall include the person's statement as to whether he or she previously has had counsel appointed under this section.
 - (2) If any of the information required in paragraph (1) is missing from the request, the court shall return the request to the convicted person and advise him or her that the matter cannot be considered without the missing information.
 - (3)
 - (A) Upon a finding that the person is indigent, he or she has included the information required in paragraph (1), and counsel has not previously been appointed pursuant to this subdivision, the court shall appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.
 - (B) Upon a finding that the person is indigent, and counsel previously has been appointed pursuant to this subdivision, the court may, in its discretion, appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.
 - (4) Nothing in this section shall be construed to provide for a right to the appointment of counsel in a postconviction collateral proceeding, or to set a precedent for any such right, in any context other than the representation being provided an indigent convicted person for the limited purpose of filing and litigating a motion for DNA testing pursuant to this section.
- (c)
 - (1) The motion shall be verified by the convicted person under penalty of perjury and shall do all of the following:
 - (A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.
 - (B) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.
 - (C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.
 - (D) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecution or defense, if known.
 - (E) State whether any motion for testing under this section previously has been filed and the results of that motion, if known.

- (2) Notice of the motion shall be served on the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause.
- (d) If the court finds evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, it shall order the party at whose request the testing was conducted to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing.
- (e) The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial, or accepted the convicted person's plea of guilty or nolo contendere, unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.
- (f) The court shall grant the motion for DNA testing if it determines all of the following have been established:
- (1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion.
 - (2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.
 - (3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.
 - (4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence.
 - (5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial.
 - (6) The evidence sought to be tested meets either of the following conditions:
 - (A) The evidence was not tested previously.
 - (B) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.
 - (7) The testing requested employs a method generally accepted within the relevant scientific community.
 - (8) The motion is not made solely for the purpose of delay.
- (g) (1) If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used.

- (2) The testing shall be conducted by a laboratory mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. If the parties cannot agree, the court shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).
- (h) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.
- (i) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the district attorney or Attorney General shall not be borne by the convicted person.
- (2) In order to pay the state's share of any testing costs, the laboratory designated in subdivision (g) shall present its bill for services to the superior court for approval and payment. It is the intent of the Legislature to appropriate funds for this purpose in the 2000-01 Budget Act.
- (j) An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney, or the Attorney General. The petition shall be filed within 20 days after the court's order granting or denying the motion for DNA testing. In a noncapital case, the petition for writ of mandate or prohibition shall be filed in the court of appeal. In a capital case, the petition shall be filed in the California Supreme Court. The court of appeal or California Supreme Court shall expedite its review of a petition for writ of mandate or prohibition filed under this subdivision.
- (k) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, a DNA laboratory shall be required to give priority to the DNA testing ordered pursuant to this section over the laboratory's other pending casework.
- (l) DNA profile information from biological samples taken from a convicted person pursuant to a motion for postconviction DNA testing is exempt from any law requiring disclosure of information to the public.
- (m) Notwithstanding any other provision of law, the right to file a motion for postconviction DNA testing provided by this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.
- (n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
- (a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain all biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall

have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for deoxyribonucleic acid (DNA) testing.

- (b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:
 - (1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.
 - (2) The notifying entity does not receive, within 90 days of sending the notification, any of the following:
 - (A) A motion filed pursuant to Section 1405. However, upon filing of that motion, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.
 - (B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.
 - (C) A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.
 - (3) No other provision of law requires that biological evidence be preserved or retained.
- (c) Notwithstanding any other provision of law, the right to receive notice pursuant to this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM**PENAL CODE §1417.9**

- (a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain all biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for deoxyribonucleic acid (DNA) testing.
- (b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:
- (1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.
 - (2) The notifying entity does not receive, within 90 days of sending the notification, any of the following:
 - (A) A motion filed pursuant to Section 1405. However, upon filing of that motion, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.
 - (B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.
 - (C) A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.
 - (3) No other provision of law requires that biological evidence be preserved or retained.
- (c) Notwithstanding any other provision of law, the right to receive notice pursuant to this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

CALIFORNIA POSTCONVICTION DNA TESTING ASSISTANCE PROGRAM**SPECIAL CONDITIONS CERTIFICATION**

INSTRUCTIONS

1. Carefully read the Special Conditions – this document will become part of your signed Grant Award Agreement.
2. The official authorized to enter into the Grant Award Agreement must initial the bottom corner of each page and sign the bottom of the last page, acknowledging that the grant recipient will adhere to the Special Conditions and reporting requirements associated with the Cal EMA CADNAP program.

The original initials and signature of the authorized official must be in [blue ink](#).

SPECIAL CONDITIONS CERTIFICATION

1. The recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the California Emergency Management Agency (Cal EMA) Recipient Handbook and the office of Justice Programs (OJP) Financial Guide.
2. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, Colleges, and Non-Profit Organizations, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from OMB Circular A-133 audits (and any other audits of grant funds) are not satisfactorily and promptly addressed, as further described in the current edition of the OJP Financial Guide, Chapter 19.
3. Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of Cal EMA and OJP.
4. The recipient must promptly refer to the Cal EMA any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any subrecipients or contractual services. Potential fraud, waste, abuse, or misconduct should be reported to Cal EMA who in turn will report to the OIG by – mail:

Office of the Inspector General
U.S. Department of Justice
Investigations Division
950 Pennsylvania Avenue, N.W.
Room 4706

Washington, DC 20530

E-mail: oig.hotline@usdoj.gov

Hotline: (contact information in English and Spanish): (800) 869-4499

or hotline fax: (202) 616-9881

Additional information is available from the DOJ OIG website at www.usdoj.gov/oig.

5. Within 45 days after the end of any conference, meeting, retreat, seminar, symposium, training activity, or similar event funded under this award, and the total cost of which exceeds \$20,000 in award funds, the recipient must provide the Cal EMA program specialist with the following information and itemized costs:

- 1) Name of event;
- 2) Event dates;
- 3) Location of event;
- 4) Number of federal attendees;
- 5) Number of non-federal attendees;
- 6) Costs of event space, including rooms for break-out sessions;
- 7) Costs of audio visual services;
- 8) Other equipment costs (e.g., computer fees, telephone fees);
- 9) Costs of printing and distribution;
- 10) Costs of meals provided during the event;
- 11) Costs of refreshments provided during the event;
- 12) Costs of event planner;
- 13) Costs of event facilitators; and
- 14) Any other costs associated with the event.

The recipient must also itemize and report any of the following attendee (including participants, presenters, speakers) costs that are paid or reimbursed with grant funds:

- 1) Meals and incidental expenses (M&IE portion of per diem);
- 2) Lodging;
- 3) Transportation to/from event location (e.g., common carrier, Privately Owned Vehicle (POV)); and,
- 4) Local transportation (e.g., rental car, POV) at event location.

Note that if any item is paid for with registration fees, or any other non-award funding, then that portion of the expense does not need to be reported.

6. The recipient acknowledges that the Office of Justice Programs reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for Federal purposes: (1) the copyright in any work developed under an award or sub award; and (2) any rights of copyright to which a recipient or subrecipient purchases ownership with Federal support.
7. The recipient acknowledges that the Office of Justice Programs has the right to (1) obtain, reproduce, publish, or otherwise use the data first produced under an award or sub award; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
8. To assist in information sharing, the recipient shall provide the Cal EMA program specialist with a copy of all interim and final reports and proposed publications (including those prepared for conferences and other presentations) resulting from this agreement. Submission of such materials prior to or simultaneous with their public release aids NIJ in responding to any inquiries that may arise. Any publications (written, visual, or sound) - excluding press releases and newsletters - whether published at the recipient's or government's expense, shall contain the following statement: This project was supported by Award No. _____ awarded by Cal EMA through the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect those of the Department of Justice. NIJ defines publications as any planned, written, visual or sound material substantively based on the project, formally prepared by the award recipient for dissemination to the public.

9. The recipient shall transmit to the Cal EMA program specialist copies of all official grant-related press releases at least ten (10) working days prior to public release. Advance notice permits time for coordination of release of information by Cal EMA to NIJ where appropriate and to respond to press or public inquiries.
10. Pursuant to 28 C.F.R. Part 18, Cal EMA may suspend or terminate funding under this award, at any time before the completion of the project funded by this award, for the recipient's failure to comply with these special conditions or with the project's goals, plans and methodology set forth in the approved application.
11. The recipient shall submit semiannual progress reports to Cal EMA. Progress reports shall be submitted within 30 days after the end of the reporting periods, which are June 30 and December 31, for the life of the award. These reports will then be submitted by Cal EMA to the Office of Justice Programs, on line-through the Internet at <https://grants.ojp.usdoj.gov/>.
12. Recipient acknowledges and agrees that for purposes of performing work under this award, that they are not only bound by the Cal EMA Recipient Handbook but also by all applicable Federal laws and regulations, including the regulations specifically identified in the Standard Assurances Form located at www.ojp.usdoj.gov/forms.htm. Failure to adhere to these laws and regulations may be considered a significant failure to comply with the terms and conditions of this grant award.
13. Cal EMA and OJP reserve the right to conduct periodic on-site monitoring visits upon reasonable notice to the grantee (at least fourteen days) prior to each such site visit.
14. No portion of these grant funds shall be used towards any part of the annual cash compensation of any employee of the grantee whose total annual cash compensation exceeds 110% of the maximum salary payable to a member of the Federal government's Senior Executive Service at an agency with a Certified SES Performance Appraisal System for that year.

This prohibition may be waived on an individual basis at the discretion of the Assistant Attorney General for OJP.

15. Approval of this award does not indicate approval of any consultant rate in excess of \$450 per day. A detailed justification must be submitted to Cal EMA who in turn will seek approval by the Office of Justice Programs (OJP) program office prior to obligation or expenditure of such funds.
16. The recipient agrees to comply with all Federal, State, and local environmental laws and regulations applicable to the development and implementation of the activities to be funded under this award.
Environmental Assessment (EA): The recipient agrees and understands that funded activities (whether conducted by the recipient or sub awards or contractors) may require the preparation of an environmental assessment (EA) as defined by the Council on Environmental Quality's Regulations for implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), found at 40 CFR Part 1500. An EA is a concise public document that briefly provides sufficient analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact for the proposed activity. If in completing an EA for a proposed activity, potential adverse environmental impacts are identified, the EA will serve as a vehicle for developing either alternative approaches or mitigation measures for avoiding or reducing the identified adverse environmental impacts.
17. The Project Director and key program personnel designated in the application shall be replaced only for compelling reasons and with the concurrence of Cal EMA and OJP. Cal EMA and OJP will not unreasonably withhold concurrence. All successors to key personnel must be approved, and such approval is contingent upon submission of appropriate information, including, but not limited to, a resume. Changes in other program personnel require only notification to Cal EMA OJP and submission of resumes, unless otherwise designated in the award document.

18. (a) Accreditation and Privacy Requirements; CODIS; No Research

The recipient shall ensure that each DNA analysis conducted under this award will be performed either (1) by accredited government-owned laboratories, or (2) through an accredited fee-for-service vendor. The accreditation must be by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community. The laboratory must undergo external audits not less than once every 2 years that demonstrate compliance with the DNA Quality Assurance Standards established by the Director of the FBI.

The recipient shall maintain each DNA analysis conducted under this award, and each stored DNA sample that results from this award, in accordance with any applicable federal privacy requirements and restrictions on disclosure.

The recipient agrees to notify NIJ promptly upon any change in the accreditation status of any of its forensic science laboratories, if applicable.

The recipient shall ensure that all eligible forensic DNA profiles obtained with funding under this award will be entered into the Combined DNA Index System (CODIS), and, where applicable, uploaded to the National DNA Index System (NDIS).

The recipient shall ensure that none of the funds provided under this award are used for research or statistical projects or activities as defined by 28 CFR Part 22 or for research as defined by 28 CFR Part 46. Any questions concerning this provision should be directed to Cal EMA.

(b) Non-supplanting of State or Local Funds

The recipient shall ensure that federal funds made available through this award will not supplant State or local funds, but instead will be used to increase the amount of funds that would, in the absence of federal funds, be available from State or local sources for activities funded through this award. The recipient agrees to notify NIJ immediately if the recipient receives new State or local funding for any of the purposes included in the approved application for this award.

(c) Evaluations

The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

19. Within 90 days of the end of the award period the recipient shall submit a report that, at a minimum, with respect to funds provided under this FY 2009 award, provides: (1) a summary and assessment of the program carried out with the funds made available under this award, and (2) the number of postconviction cases of forcible rape, murder and nonnegligent manslaughter- (a) reviewed, by offense, (b) reviewed pursuant to court order, by offense, (c) reviewed pursuant to executive order (e.g., order of the Governor), by offense, (d) reviewed in which biological evidence still existed, by offense, (e) subjected to DNA analysis, by offense, and (f) yielded forensic DNA profiles, by offense. The recipient shall ensure that all data and information necessary for the report is collected throughout the award period.

20. Unless otherwise expressly authorized in writing by Cal EMA or NIJ, the use of funds provided under this award is limited to case review, location of evidence, and DNA analysis of biological evidence.

"Case review" means review of files or documentation of postconviction cases of forcible rape, murder, and nonnegligent manslaughter by appropriate persons such as prosecutors, public defenders, law enforcement personnel, and medical examiners, in order to determine whether biological evidence may exist that might (through DNA analysis) demonstrate actual innocence.

"Locate evidence" means seek to locate, following a case review, biological evidence that (through DNA analysis) might demonstrate actual innocence, through activities such as the searching of files, storage facilities, and evidence rooms.

"DNA analysis of biological evidence" includes the handling, screening, and DNA analysis of biological evidence located in connection with a case review.

Signature of Project Director

Date